Before the Federal Communications Commission
Washington, DC 20554

In the Matter of:	)	
	)	
Schools and Libraries Universal Service Support Mechanism	)	CC Docket No. 02-6
	)	

REPLY COMMENTS SUBMITTED BY THE

STATE OF ALASKA
ALASKA STATE LIBRARY
AND DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT
IN RESPONSE TO THE
SECOND REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING
RELEASED APRIL 30, 2003

The State of Alaska Department of Education and Early Development and the Alaska State Library (EED) submit these reply comments in response to those submitted to the Notice of Proposed Rulemaking (FCC 02-6) released on April 30, 2003. In this Notice, the Federal Communications Commission (the Commission) sought public input on certain rules and operational procedures of the Schools and Libraries Universal Service Fund. Comments were submitted on behalf of EED by the Alaska State Library on July 21, 2003. EED is happy to submit these further comments in reply to those filed during the previous period. In these comments, we will address issues raised by individual respondents as well as those introduced by the Commission.

ORDERS PUBLISHED IN THE SECOND REPORT AND ORDER

Several commenters made reference to the orders released in the Second Report and Order. Although most of the comments were in agreement with the general tenor of the orders, it was almost universally requested that implementing guidance and instructions be expeditiously published. As the application period for the next program year is already

open and soon to be moving into high gear, applicants need to know the particulars of the expanded definition of "educational purpose" and precisely how "duplicative services" will be defined.

We specifically agree with the NexTel comments asking for clarification that wireline and wireless services, even within the same school, are not necessarily duplicative. The presence of a desk telephone in the gymnasium office certainly doesn't mean that a cell phone on the sidelines of the playing field is a duplicative service. Applicant institutions which provide cell phones for employees who they believe need the flexibility of such service usually contract for a carefully measured number of minutes which they think will cover the needs of the position. It would be wasteful of a school or library to provide cell phones for employees to replace all of the wireline phones currently used, while providing both to an employee to be used in various roles in his job would not be. Providing both services to a single employee is akin to providing a phone on desks located in several buildings for the use of one person at different times.

We also concur with the commenters (chiefly state wide networks and services; i.e. Illinois State Board of Education, Arkansas Work Group, NASTD, SECA, and ALA) who urged a cautious implementation of the duplicative services mandate. While it is obviously not an effective use of the fund to provide the same service to the same individuals for the same purpose, there are circumstances where switching from one provider to another can cause an overlap of service for a short time. Institutions such as the ones served by E-Rate cannot take the chance of being without telecommunications services for even an hour, certainly not a day. Continuing a present service while the new one is installed, tested and debugged is only good public service. The Administrator should be directed to allow flexibility in such cases and to not construct such severe cut-off dates as to put services in jeopardy.

EED is pleased that the Commission rightly concluded that voice mail should be included in funding requests for either telecommunications services or Internet access services. The inclusion of this added service to requests in either category without requiring an additional and separate request will have the effect of streamlining both application and review processes. Therefore, we disagree completely with the Funds for Learning request that voicemail be labeled a Priority 2 service.

Indeed, we would propose that voice mail be included in the Administrator's definition of POTS. When the E-Rate program began, a definition of POTS did not include anything other than dialtone and the ability to reach an operator. As the program has moved on, more services are included in "plain old" service. This reflects the growing sophistication of the telephone industry itself and its competitive drive to provide enhanced service for its customers. The definition of POTS should grow just as the expectations of phone service use have grown. Voice mail, E911, safety service lines and other services are basic operational items in today's business world. School districts and libraries should use the services. Allowing for funding under POTS will be more efficient than separating them out of bills.

FURTHER NOTICE OF PROPOSED RULEMAKING

TECHNOLOGY PLAN

A preponderance of those who replied to the Commission's request for comments on the timing of technology plan approval agreed with the EED contention that the plan should have approval by the time that services start. Such disparate organizations as Verizon and CoSN and ISTE concurred with that view. The suggestions put forth by service providers

Dell and BellSouth that requirements be tightened and made more specific seem to reflect an unfamiliarity with the educational planning process in general. There has always been an agreement with the Commission and the Administrator that applicants should not write plans simply to qualify for E-Rate funding. The plans should have a higher purpose and be directed toward educational goals rather than becoming equipment lists. In the current atmosphere of concern over meeting the requirements of No Child Left Behind (NCLB), restructuring the E-Rate requirements in a plan would fall as an enormous burden on the applicants as well as on the state education agencies on which the program relies for plan approval. Indeed, directing that approved NCLB plans be accepted by the Administrator and the auditing staff as E-Rate acceptable would not only retain the high quality of the plans used, but provide welcome relief to those districts who are struggling to meet one set of federal requirements while keeping an eye on another.

COMPUTERIZED ELIGIBLE SERVICES LIST

We were pleased to see that so many of the respondents to the NPRM agreed with the premise that the Commission put forth that constructing a further list should wait until the pilot list for Internal Connections is constructed, posted and has operated for a time. Many respondents echoed the "be cautious" theme with the arguments proposed by Sprint being the most persuasive to EED. We urge a delay in moving forward with this process until the already promulgated list can be evaluated.

OTHER MEASURES TO PREVENT WASTE, FRAUD, AND ABUSE

DEBARMENT AND OTHER SANCTIONS

EED agrees with CoSN and ISTE that the FCC should *not* participate in any federal program that would require reciprocal debarment because such a policy would be "a

blunt instrument" and might do more harm than good. We share the overall concerns and arguments made by CoSN and ISTE on pages 5-6 of their comment of July 21, 2003. As Verizon notes in its comment, "…the Commission should not opt in to the government-wide debarment rules regarding imputation, because they are so overbroad as to risk debarring companies based on the random acts of a few bad employees." Given the current debate over government-wide debarments of WorldCom/MCI and Sprint, the danger to E-Rate program participants is that some could be left without viable providers, even when vendor debarment is due to practices completely unrelated to the E-Rate program itself!

EED also shares the concerns of the Arkansas Work Group (AEWG) that "[s]tate procurement agencies and/or state networks may not have the ability under local law or regulation to act upon suspension or debarment determinations by the FCC under existing contracts or agreements." For this reason, as E-Rate program violation disciplinary procedures are developed and, more importantly, once they have been finalized, these procedures should be reviewed by local jurisdictions for compatibility problems with local regulations. We agree with the AEWG recommendation that a standard contract provisions - allowing for suspension or termination of local agreements when the FCC debars providers - should be added to both new and existing E-Rate contracts.

Furthermore, and most importantly, debarment should be localized to the jurisdictions (e.g., school districts) where the actual fraud, waste or abuse has occurred: it should not be applied automatically on a statewide or national scale for mere punitive effect, unless there is a clear pattern of misbehavior that would justify the broader penalty. In too many areas of the nation, telecommunication competition is still severely limited and the debarment of a single eligible carrier for infractions occurring elsewhere could preclude the successful participation of many schools and libraries in the E-Rate program.

EED agrees with the general consensus among commenters that there should be a "graduated level of sanctions tied to the severity of the infraction" [EdLiNC] or "graduated system of punishment" [CoSN and ISTE]. CoSN/ISTE present a well-developed model, though greater clarity is needed as to what defines a "significant" infraction as opposed to a "severe" one. Also, some thought needs to be given concerning the impact of vendor suspension or debarment on multi-year contracts.

As for "other grounds for debarment," we again agree with CoSN/ISTE that disqualifying actions, in general, should be related to the E-Rate program and that unrelated acts, even those which may indicate a "lack of business integrity or business honesty,' should not automatically lead to debarment from participation in the E-Rate program. Debarment itself should be aimed at individuals, not organizations. The debarment of program vendor or participant organizations should be reserved for egregious cases of fraud or abuse carried out on an institutional policy level. On this issue, we agree with the arguments made by Nextel Communications on pages 9-10 of its comment.

We also agree with the EdLiNC recommendation that "the Commission or SLD make available online the list of all individuals and entities debarred form [sic] participating in the E-Rate program because they have been convicted criminally or held liable civilly for actins arising out of participation in the E-Rate program, or because the Commission or SLD have determined that they have violated E-Rate programs willfully and repeatedly." As for Sprint's suggestion that a 30% rule apply to disciplinary proceedings, we find the idea intriguing but, in the end, illogical. Wrongdoing is not always tied to E-Rate dollars; furthermore, the fact that 31% of a $10,000 contract might invoke disciplinary action while 29% of a $10,000,000 contract would not, is the kind of absurd result to which such a formula could lead.

Finally, commenters are unanimous in their recommendation that participants be allowed to change service providers post-debarment and pre-funding commitment decision. EED agrees with the Information Technology Group of the New York Public Library (NYPL) and many others that applicants should be able to submit a request for a SPIN change even before an application is approved when a provider has been debarred.

MAINTENANCE

Under the broad umbrella of "other measures", several respondents mentioned the category of maintenance as being one particularly liable to be susceptible to waste, fraud and abuse. The American Library Association, StateNets, and Greg Weisiger all, in various ways, urged that the maintenance agreements which are currently funded in the category in which their target services or equipment are located, be reduced to a simple funding of an equipment warranty. Specifically mentioned were the costly and elaborate help-desk arrangements and the funding of personnel who in essence become a part of the staff of an eligible institution. It is hard to disagree that these expensive arrangements should be reined in.

However, there is another kind of maintenance agreement, frequently entered into by small and remote applicants, that is absolutely necessary to the continuance of their access to the world of information. This type of help desk tells the principal of a two room school in bush Alaska which buttons to push to restore the bandwidth connection just before the district-wide interactive video class of advanced calculus is going to be broadcast. This personnel agreement flies a technician to a remote island where a winter windstorm has completely shut down telecommunications so that the link can go back up.

In any redefinition of maintenance, the Commission must keep in mind the needs of the poorest, most rural, and most remote applicants who have no other access to the technical expertise which keeps their equipment running. After all, the original Act was aimed at just such applicants.

SIMPLIFICATION

Over and over through the comments filed in response to the NPRM, the word "simplify" appears. With respect to the eligibility list, filing forms, dealing with appeals, and awarding funds, everyone has proposed numerous ways to streamline the operation. While we realize that the current environment demands a concentration on waste, fraud and abuse, we respectfully contend that much of that malfeasance would never have occurred if the program were simpler - simpler to understand, simpler to apply for, simpler to account for.

The Waste, Fraud, and Abuse Task Force (WFATF) is currently meeting and will soon proffer its report. Hopefully its suggestions will be of value in curtailing abuses of the program without unduly complicating an already complicated situation. Accordingly, we suggest that the Commission quickly convene a Task Force charged with the responsibility for recommending actions to simplify all phases of the program. Like the WFATF, it should represent all constituents of E-Rate. Alaska and the EED would be happy to participate in representing the most remote and rural applicants.

Respectfully submitted,

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